Consolidation Coal Company *and* United Mine Workers of America, District 31. Case 6–CA–22561

November 7, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 7, 1991, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) Furnish the Union with all information requested by the Union's letter dated January 5, 1990, and the information requested by the Union in items 2, 5, 6, and 7 of its letter dated January 22, 1990.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union, United Mine Workers of America, as the exclusive bargaining agent of our employees in the appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, which was necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL furnish to the Union all information requested by the Union's letter dated January 5, 1990, and the information requested by the Union in items 2, 5, 6, and 7 of its letter dated January 22, 1990.

CONSOLIDATION COAL COMPANY

Suzanne C. McGinis, Esq., for the General Counsel.
Darriel L. Fassio, Esq. and *Anthony J. Polito, Esq.*, of Pittsburgh, Pennsylvania, for the Respondent.
Barbara Evans Fleischauer, Esq., of Fairmont, West Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Pittsburgh, Pennsylvania, on February 11 and 12, 1991, on a consolidated record with Case 6–CA–22722. By order dated March 6, 1991, the proceedings were severed and subsequently briefs were filed by Respondent and the General Counsel. The proceeding is based upon a charge filed March 22, 1991,[1] by United Mine Workers of America, District 31. The Regional Director's complaint dated December 21 alleges that Respondent, Consolidation Coal Company of Pittsburgh, Pennsylvania, violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to furnish the Union with certain information needed by the Union to police and enforce the parties' collective-bargaining agreement.

[1] All following dates are in 1990 unless otherwise indicated.

Upon review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the mining and nonretail coal at facilities in Pennsylvania and West Virginia. It annually ships goods valued in excess of $50,000 from its location to points outside those States and and it admits that all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent is and has been a signatory to collective-bargaining agreements between the Bituminous Coal Operators Association (BCOA) and the International Union. The agreement negotiated in 1988 is effective from February 1, 1988, to January 31, 1993. B. R. Brown, president of Respondent, was the chief negotiator for the employers' association.

The production of bituminous coal involves the depletion of resources at work locations, and because various mining arrangements can adversely impact on job security, the Union's main objective in the 1988 negotiations was to secure a provision that would offer protection to laid-off miners. Consequently, for the first time, the agreement included a provision entitles ''Article II, Job Opportunity and Benefit Security (JOBS)'' wherein the Union's concerns about job security are expressly recognized.[2]

In effect, the contract provides that employees laid off from Respondent's operations have the right to complete panel forms requesting re-employment to any job for which he or she is qualified at other mines of Respondent. The panel forms are then retained by Respondent and the Union. The contract also covers the operation of all coal lands and coal preparation facilities held by the signatory, its subsidiaries and affiliates, whether in operation at the time of the contract execution or at any time thereafter. The contract also bars the leasing or licensing of coal lands, coal production, or preparation facilities to avoid the application of the contract, and the licensing of coal lands if such licensing results in the loss of bargaining unit work.

On May 24, 1989, the *Charleston Gazette* published an article regarding Respondent's receipt of the governor's award for excellence in exporting from the Governor of West Virginia. Wolfpen Knob Development, ''a joint venture mine,'' was listed among Respondent's West Virginia mines participating in the coal exporting market. In June 1989, after learning of the article, the Union requested names, job titles, and dates of hire for all employees at Respondent's Wolfpen Knob operation. In July 1989, Respondent's Pittsburgh headquarters responded that Wolfpen had no operations.

Union Vice President Jerry Miller initiated investigation into the Wolfpen Knob Development Company operation and its relationship to Respondent. Through various deeds and other records obtained from the local county courthouses in West Virginia, the Union learned that in 1975 Respondent and King Knob Coal Co., Inc., a signatory to several pre-1988 agreements, arranged to jointly own a 500 acre tract of coal in the Holly district of Webster County, West Virginia and a leasehold estate in 21 parcels of coal in Webster and Braxton Counties in West Virginia and that in September 1978, Respondent granted King Knob a one-half interest in the coal in certain land in the Holly district.

In 1980, Wolfpen Knob, a wholly owned a subsidiary of Respondent, was incorporated and shortly thereafter, in June 1981, Respondent assigned its interest in the land jointly owned with the King Knob to Wolfpen Knob. During the same timeframe, King Knob granted its interests in the Holly district land to Juliana Mining Company (JMC); For this land, then valued at about $405,000, Juliana Mining paid King Knob the sum of $10.[3]

As a result of these transactions, the land once owned by Respondent and King Knob, at a time when both companies were signatory employers, was transferred to Wolfpen Knob and JMC, neither of which were, or are, signatory to any contract with the Union. Thereafter, Juliana Mining Company and Wolfpen Knob created Juliana Coal Company, as a so-called ''joint venture,'' and Julian Coal Company began surface mining operations and a coal preparation plant on land near Erbacon in the Holly district, utilizing the services of unrepresented employees.

By letter dated January 5, 1990, the Union requested several mining contracts between King Knob and Respondent, and an operation agreement dated September 26, 1975, between King Knob and Respondent for the joint exploration, development and operation of certain coal lands in Webster and Braxton Counties of West Virginia. By letter dated January 22, 1990, the Union also requested the following information:

> 1. The relationship between Respondent and Wolfpen;

[2] The portions of art. II relevant to this proceeding are as follows:

A. *Non Signatory Operations*

1. Except as modified in Section C, the first three out of every five new job openings for work of a nature covered by this Agreement at any existing, new, or newly acquired non-signatory bituminous coal operation of the Employer shall be filled by classified laid off employees on the panels of the Employer's operations covered by this agreement. If the newly acquired or non-signatory operation has a panel of laid-off employees established pursuant to a valid collective bargaining agreement, those individuals shall first be recalled before this section applies.

C. *Coordination Of Employment Obligations Under the JOBS Program*

At those locations where the Employer hereto is the lesse- licensee of another employer which is also party to the obligations of Article II, the Employer hereto shall first honer the hiring obligation to which it should be bound as a result of the lessor-licensor's agreement with the Union. Thereafter, and at all other locations covered by this Article, the Employer hereto shall follow the obligations of Section A and B above.

D. *Employer-Wide Panel Rights to Signatory Operations*

Each Employer also agrees to extend employer-wide panel rights to its signatory operations pursuant to Article XVII. Accordingly, within forty-five (45) days of the effective date of the Agreement, a laid-off employee may revise his panel form for any purpose, in addition to his annual right of revision under Article XVII (d).

[3] Juliana Mining Company was incorporated in 1976. The Union believes Juliana Mining Company to be a wholly owned subsidiary of Vebe International Inc., and an affiliate of King Knob.

2. The relationship including financial and operational control among Wolfpen Knob, JMC and Julian Coal Company;

3. The date that Juliana Coal Company commenced operations at its operating location near Erbacon;

4. An account of the nature of the operation doing business as Juliana Coal Company.

5. The identities of the officers, directors, managers, and supervisors of Juliana Coal Company; and the identities of any of those who hold positions with Respondent or its subsidiaries and affiliates.

6. The number of bargaining unit employees employed at the various sites at Erbacon, West Virginia and the names of their employer; and,

7. The identities, dates of hire and job titles of bargaining unit employees at the Erbacon sites, and an indication of which bargaining unit employees were laid off UMWA members, and a listing of all laid off UMWA Consol employees to whom offers of employment were extended.

By letter of February 21, Respondent informed the Union that the reported article in the *Charleston Gazette* was inaccurate and Wolfpen had no operations. Nevertheless, Respondent answered questions (1), (3), and (4) above and asserted, in substance, that Wolfpen is a passive development company that supplied money to Juliana Mining Company and that Juliana Mining Company is the operation company. Respondent claims that it had no information concerning items (5) and (7) and the employees, supervisors, managers, officers, or directors of Juliana Coal Company, and was unable to compare them to any other list of names.

Miller had already contacted the Governor's office to inquire as to the source of the information in the Gazette article and on February 13, the commissioner of West Virginia's Department of Energy provided Miller with a press release which had been submitted to the Governor's office by the Respondent. The asserted ''inaccurate'' pertinent language was reported exactly as worded by Respondent itself.

By letter dated March 21, the Union renewed its information request to Respondent and by letter dated March 28, Respondent against advised the Union that neither Respondent nor Wolfpen Knob has a Wolfpen mine near Erbacon, West Virginia, and asserted that it could not understand how a claim of any hiring obligation could be asserted against Wolfpen. In answer to the information request of January 5, Respondent asserted that the contracts and agreements with King Knob were not relevant, however, by letter dated April 24, the Union explained the basis for its belief that Wolfpen has a hiring obligation and explained the relevance with King Knob. The Union also renewed its request that Respondent provide information requested on January 5 and 22 and by letter dated May 22, Respondent again refused to provide further information.

Respondent admits that Wolfpen Knob is a wholly owned subsidiary of Consol and that Wolfpen Knob is entitled to and receives 50 percent of the coal which is mined at the Erbacon mine site which is the subject of District 31's inquiries. It asserts, therefore, that it properly took credit for the Wolfpen Knob portion of the coal produced from the Erbacon site in reporting sales on the export market in its press release.

Respondent also points out that its regional vice president of mining, Darrel Auch, testified that Wolfpen Knob ''does not mine any of the coal at the Erbacon mine site'' but instead, Wolfpen Knob has an agreement with Juliana Mining Company to develop coal properties and that Juliana Mining Company is the operator of the mine located at Erbacon, West Virginia; that Wolfpen Knob shares half the cost of mining coal at the Erbacon site based on cost figures provided to it, by Juliana Mining and, in return, received half of the coal that is mined; that Juliana Coal Company operates the mine and employees the employees and that in return for its service as the operator of the mine, Juliana received a management fee.

Auch also testified that his technical assistant, John Morgan, travels to the Erbacon site approximately once a month and spends approximately 4 hours on each trip, to check on mining projections and techniques and the accuracy of the cost and tonnage information that is being provided by Juliana Mining Company. Auch said he had only been to the Erbacon site on two or three occasions in 5 years and on those occasions he was merely checking on the mining techniques and mining projections that had been made by Juliana Mining Company.

III. DISCUSSION

The Respondent contend that the General Counsel has failed to show the necessity and relevancy to the union collect-bargaining function of the information requested by the Union and also has failed to establish even a ''reasonable belief'' that Respondent and King Knob were operation as a single employer, arguing that the Union had only a ''suspicion,'' insufficient to justify its request, citing *Bohemia Inc.*, 272 NLRB 1128 (1984), a case also cited by the General Counsel.

As summarized in the General Counsel's brief, it is well established that an employer must comply with a union's request for information that will assist the union in fulfilling its responsibilities as the employees' statutory representative as part of its duty to bargain in good faith, *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979), including information relevant to both contract administration and contract negotiation, *Leland Stanford Jr. University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

The standard applied in determining relevancy in these circumstances requires that the information requested have some bearing on the issue for which the information is requested and be of probable or potential relevance to the Union's duties. *Pfizer, Inc.*, 269 NLRB 916, 918 (1984).

As stated in *Bohemia*, supra, a union must generally establish the relevancy of information regarding an employer's potential single employer or alter ego relationship with another entity. This burden was applied in *Maben Energy Corp.*, 295 NLRB 149 (1989), a case similar to the instant case, inasmuch as it involved an information request by the United Mine Workers pursuant to article II of the 1988 agreement. There, the Board found that where a union seeks information to establish an alter ego or single employer relationship, it is not required to prove the existence of such a relationship, rather, it is sufficient ''that General Counsel has established that the union had an objective factual basis for

believing'' that one entity is an ''alter ego or single employer'' of the other.

Here, I am persuaded that the Union is shown to have clear objective basis for its request for information.

Under West Virginia law a joint venture is defined as an association to carry out a single business pursuit for profit (an admitted purpose of the agreement between Wolfpen Knob and Juliana Mining), for which purpose money, property, efforts, skill, and knowledge are combined. *Price v. Halstead*, 355 Southeast 2d 380, 383 (W.Va. 1987). Joint venturers have a duty of mutual disclosure which arises from the fiduciary relationship of the contracting parties. This duty of disclosure requires a frank and full disclosure of any information within each person's possession or knowledge regarding the value of the interest. *Yost v. Cricher*, 72 Southeast 594, 595 (W.Va 1911). Accordingly, it is clear that Respondent has a right to information concerning the Wolfpen Knob venture and it can not avoid any cocommitant right by the Union to this information by asserting a lack of knowledge. Thus, even if those who processed the Union's request for information had no direct knowledge about the sought information, they had the duty to seek out that data, acquiring it from the operating company, Juliana Coal Company, if necessary.

The record shows that Respondent had actual knowledge of the identity of Juliana Coal Company's president and mine superintendent, Paul Goode, and Respondent knows the number of employees at the Erbacon site, information which is supplied so Respondent can ascertain a labor figure for use in a cost statement prepared for the Erbacon operation other. Otherwise, I find it to be inherently unbelievable that Respondent would make a commitment of lands and fund in the manner shown in the various public document set forth above and not avail itself of information necessary to protect its interest an to fulfill its duty to protect the interest of its stockholders.

In summation, it appears that the Respondent sought to avoid answering the Union's information request by asserting, in substance, that Wolfpen Knob is a passive development company supplying money with Juliana Mining and that Juliana Coal Mining is the operating company. The Union was justified in disputing this apparent ''brush-off'' because Respondent represented to the government of West Virginia that the Wolfpen Knob operation was among its mines participating in the coal export market in 1988, and because the operation is listed on various public documents as Julian Mining and Wolfpen Knob, a ''joint venture'' doing business as Juliana Coal Company.

Otherwise, information requested by the Union appears to be relevant and useful to the Union to ascertain the relationship of possible single employer or alter ego entities and to determine whether the employer has breached a contractual provision or is unlawfully avoiding its obligation to bargain or apply contractual terms relative to article II of the 1988 agreement. As noted by the General Counsel, Respondent's chief executive officer negotiated the 1988 agreement and therefore Respondent is specifically aware of the article II rights of laid-off miners to hold three out of every five jobs at any bituminous operations of the Employer.'' This is specifically related to the information Respondent has failed to provide and, accordingly, I find that the Respondent is shown to have violated Section 8(a)(1) and (5) of the Act as alleged.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce as alleged.

2. The Union is a labor organization as alleged.

3. The Respondent has failed and refused to bargain in good faith with the Union by failing and refusing to furnish the Union with certain requested information, as described in the above decision, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees in violation of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to cease and desist from engaging in such conduct or like or related conduct, to turn over to the Union the requested information described above, and to post the attached notice.

Otherwise, in this specific proceeding, it is not considered to be necessary that a broad order be issued.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, United Mine Workers of America, by failing and refusing to furnish the Union with certain requested information, as described in the above decision, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agreement agent of unit employees.

(b) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the requested information as described in the above decision.

(b) Post at its facilities in West Virginia copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a

forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''